

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97,
effective 3/1/97)

WAC 242-02-210 Petition for review--Forms--Contents. A
petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

Petitioner, Case No.

v.

PETITION FOR REVIEW

Respondent.

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address and telephone number
and those of the attorney or other authorized representative, if
any;

(b) Date of the challenged order, determination,
publication, or other action or, in the case of an alleged
failure to act, the date by which the action was required to be
taken;

(c) A detailed statement of the issues presented for
resolution by the board that specifies the provision of the act
or other statute allegedly being violated and, if applicable,
the provision of the document that is being appealed;

(d) A statement specifying the type and the basis of the
petitioner's standing before the board pursuant to RCW
36.70A.280(2) (~~(. . . Petitioners shall distinguish between
participant standing under the act, governor certified standing,
standing pursuant to the Administrative Procedure Act, and
standing pursuant to the State Environmental Policy Act, as the
case may be)~~);

(e) The estimated length of the hearing;

(f) The relief sought, including the specific nature and
extent;

(g) A statement that the petitioner has read the petition
for review and believes the contents to be true, followed by the
petitioner's signature or signature of the attorney(s) or other
authorized representative(s), if any.

(3) One copy of the applicable provisions of the document
being appealed, if any, shall be attached to the petition for
review.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-230 Petition for review--Service and filing.

(1) The original and three copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board ~~((by telegraph or))~~ by electronic telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served ~~((promptly))~~ upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-240 Date of filing--Facsimile and ~~((telegraph))~~ electronic mail.

(1) The date of filing shall be the date of actual receipt by a board at its office. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) ~~((A))~~ An electronic mail or facsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's facsimile machine or receiving

computer shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and three copies must be mailed and postmarked or otherwise transmitted to the board (~~((within twenty four hours))~~) on or before the date of sending the facsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed by fax without prior approval of the presiding officer.

(3) A fax or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-250 Notice of appearance and answer. (1) The respondent shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed and contain the respondent's address (~~((and))~~), telephone and fax numbers, and e-mail address.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and three copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-270 Intervention. (1) (~~((Any person at any time))~~) Upon timely motion, any person may ((by motion)) request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention

must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.

(5) Pleadings and briefs of an intervenor shall be filed concurrently with pleadings and briefs of the party whose position the intervenor supports.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an amicus in the case.

(2) ~~((In determining whether a person qualifies as an amicus, the presiding officer shall apply the applicable rules of appellate procedure (RAP) of the appellate courts of this state.))~~ A motion to file an amicus curiae brief must include a statement of:

(a) Applicant's interest and the person or group applicant represents;

(b) Applicant's familiarity with the issues involved in the matter and with the scope of the argument presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(3) If the person qualifies for amicus, the presiding officer may impose conditions upon the amicus's participation in the proceedings, either at the time that amicus status is granted or at any subsequent time.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-310 Service of papers. (1) Parties filing pleadings, briefs, exhibits and other documents or papers with a board shall also ~~((promptly))~~ serve copies upon all other parties no later than the date upon which they were filed with the board. Parties served shall be those included on the declaration of service list attached to the board's prehearing order, or amended prehearing order.

(2) Service upon a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

(3) Final decisions of the board shall be served upon the parties and their attorney or representative of record, if any.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1), shall be made personally or by first class, registered or certified mail, ~~((or by telegraph))~~ or by facsimile transmission. The board may be served by e-mail filings, provided that an original and three copies are deposited in the mail and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-340 Proof of service--Certificate. Where proof of service is required by this chapter, by statute, or upon a board's request, filing the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

- (1) An acknowledgement of service;
- (2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in person to the named individuals;
- (3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:
 - (a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or
 - (b) ~~((Telegraphing a copy, properly addressed with charges prepaid, to each party in the case or that party's attorney, or other authorized representative; or~~
 - ~~(c))~~ Transmitting a copy by electronic telefacsimile device, and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or
 - ~~((d))~~ (c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-52001 Exhibits ~~((lists))~~. (1) ~~((Unless otherwise directed by the board or presiding officer, within fifty days of the filing of the petition for review, each of the parties shall identify those documents listed in the index which the party intends to use as an exhibit. The documents identified in this stage shall be labeled "preliminary list of exhibits." The preliminary list of exhibits shall be filed with the board and a copy served on all parties. In complying with the requirements of this subsection, parties shall not simply designate every document but shall carefully review the index, and designate only those documents that are reasonably necessary for a full and fair determination of the issues presented.~~

~~((2) The board or the presiding officer may establish a deadline for identifying and filing a final list of exhibits with the board and serving a copy on all other parties. The board or presiding officer may elect not to require the filing of final exhibit lists and instead, require that a))~~ Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto. A copy of any document cited in a brief shall be served on the opposing party or parties by the time specified by the board or presiding officer and an original and three copies of the exhibits shall be filed with the board.

~~((3) A presiding officer may order the use of a stipulated exhibit list in lieu of or in addition to preliminary and/or final exhibit lists.~~

~~((4) Copies of designated documents from the index that have been certified or stipulated to be true and accurate may be admitted into evidence before a board in lieu of the original document.))~~ (2) Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.17.300, as amended.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-893 Compliance--Hearing. (1) Upon a motion of a party or participant, the board shall reconsider its final decision and order and decide, if no determination of invalidity had previously been made, whether one should now be made. The procedures at the compliance hearing shall be as set forth by the presiding officer, pursuant to WAC 242-02-891. After a compliance hearing, the board shall determine whether a state agency, county or city is in compliance with the requirements of the act as remanded in the final decision or order and any compliance schedule established by the board.

(2) The evidence in a compliance hearing shall consist of the exhibits cited in the briefs submitted in the compliance proceeding and either attached to the briefs or specifically identified as exhibits submitted and attached to prior briefs filed in the same case number.